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24
25 UNITED STATES DISTRICT COURT
26 NORTHERN DISTRICT OF CALIFORNIA
27
28 SAN FRANCISCO DIVISION

SONOS, INC.,

Plaintiff,

vs.

GOOGLE LLC,

Defendant.

Case No. 3:20-cv-06754-WHA

Consolidated with Case No. 3:21-cv-07559-
WHA

**GOOGLE LLC'S RESPONSE TO THE
COURT'S REQUEST FOR
INFORMATION REGARDING CLAIM
CONSTRUCTION AND *O2 MICRO***

Google hereby provides its submission regarding claim construction and *O2 Micro* issues pursuant to the Court’s request for additional briefing. There is no waiver of these issues because Google preserved its underlying positions regarding the proper claim scope within the context of its long-standing non-infringement arguments in this case. Further, as explained in more detail below, Google filed a summary judgment motion seeking non-infringement of the new design that was previously deferred to a bench trial before the Court determined it would present the issue to the jury. Accordingly, the time for resolution of these claim construction disputes is now.

I. THE COURT, NOT THE JURY, MUST RESOLVE DISPUTES REGARDING THE PROPER SCOPE OF THE CLAIMS

“When the parties raise an actual dispute regarding the proper scope of these claims, the court, not the jury, must resolve that dispute.” *O2 Micro Int’l Ltd. v. Beyond Innovation Tech. Co.*, 521 F.3d 1351, 1362 (Fed. Cir. 2008). Indeed, “‘a district court may (and sometimes must) revisit, alter, or supplement its claim constructions...to the extent necessary to ensure that final constructions serve their purpose of genuinely clarifying the scope of claims for the finder of fact.’” *Level Sleep LLC v. Sleep No. Corp.*, 2021 WL 2934816, at *3 (Fed. Cir. July 13, 2021) (quoting *In re Papst Licensing Digit. Camera Pat. Litig.*, 778 F.3d 1255, 1261 (Fed. Cir. 2015)).

The Federal Circuit permits courts to construe and modify claim constructions throughout litigation: “district courts may engage in a rolling claim construction, in which the court revisits and alters its interpretation of the claim terms as its understanding of the technology evolves.” *Pressure Products Medical Supplies, Inc. v. Greatbatch Ltd.*, 429 F.3d 1364, 1377 (Fed. Cir. 2005) (internal quotations omitted). For example, in *Pressure Products*, the district court “defined the term [‘score line’] largely in response to Enpath’s cross-examination of Pressure Products’ witnesses” at trial. *Id.*; see also *Utah Med. Prods., Inc. v. Graphic Controls Corp.*, 350 F.3d 1376, 1381–82 (Fed. Cir. 2003) (holding that the district court did not err in amending its claim construction during oral arguments for pretrial motions nearly two years after the original construction); *Wisconsin Alumni Research Foundation v. Apple, Inc.*, 2015 WL 5882868, *3 (W.D. Wis. Oct. 8, 2015) (construing claim term “on the second day of trial”).

1 **II. THE PARTIES HAVE PRESENTED DISPUTES REGARDING THE SCOPE OF**
 2 **CERTAIN CLAIM TERMS THAT SHOULD BE RESOLVED BY THE COURT**

3 As the Court is aware, the accused products in this case include prior and new versions of
 4 Google’s speakers.¹ Both the ’996 patent and the ’885 patent require that a first zone player
 5 “operate[] in a standalone mode in which the first zone player is configured to playback media
 6 individually.” The claims further recite, *inter alia*, that “while operating” in the standalone mode
 7 the first zone player must [1] receive respective indications that it has been added to a first zone
 8 scene and a second zone scene, and [2] continue to operate in a standalone mode until one of those
 9 zone scenes is invoked. As set forth in Google’s previously filed summary judgment brief, the new
 10 version of Google’s accused products do *not* operate in the standalone mode while receiving an
 11 indication that they have been added to a first and second zone scene. *See* Dkt. 483 at 20-24.
 12 Whenever a Google speaker with the new design receives an indication that it has been added to a
 13 new speaker group (the alleged zone scene), it executes a “StopCurrentApp” function to terminate
 14 any playback application running on the speaker and to cease output of media playback—thereby
 15 removing the speaker from any standalone mode it may have been in. *Id.* Sonos opposed Google’s
 16 understanding of the scope of the claims (Dkt. 508 at 19-23 (“the redesigned player [] will continue
 17 operating in standalone mode while not actively playing audio after being added to the new speaker
 18 group”)) and continues to advance its theories at trial—thereby presenting a clear dispute regarding
 19 claim scope for the Court’s resolution.

20 Further, two additional disputes of claim scope arose in this case with respect to the ’966
 21 patent due to Sonos’s advancement of overbroad infringement theories—including at trial through
 22 the testimony of Dr. Almeroth. First, as set forth in Google’s previously filed brief, the ’966 patent’s
 23 recitation of a “computing device” should be tethered to the alleged invention of the patent and not
 24

25
 26 ¹ It is well-established that “knowledge of [the accused] product or process provides
 27 meaningful context for. . . claim construction.” *Wilson Sporting Goods Company v. Hillerich &*
 28 *Bradsby Co.*, 442 F.3d 1322, 1326-27 (Fed. Cir. 2006); *see also Aero Prods. Int’l, Inc. v. Intex*
Rec. Corp., 466 F.3d 1000, 1012 n.6 (Fed. Cir. 2006) (noting that it is permissible for district court
 to be made aware of accused product in connection with claim construction).

1 just any computing device. Dkt. 721. In other words, the claims should be limited in scope to the
 2 particular implementation of overlapping zone scenes in a networked multimedia system comprising
 3 zone players and a controller allegedly invented by Sonos. Dr. Almeroth, however, accuses any and
 4 all devices with the Google Home app—even those that are never used in a networked multimedia
 5 system with the requisite number of speakers. *See id.*

6 Finally, as set forth in Google’s previously filed brief, the “storage” limitation of the ’966
 7 patent requires storage of the “predefined grouping” (*i.e.*, membership information for the claimed
 8 overlapping zone scenes) for later invocation of the same grouping for playback in a group mode.
 9 Dkt. 703. Sonos, however, has advanced at trial a theory that even new membership information or
 10 simply a group ID is enough to satisfy the claims—thereby improperly expanding its claim scope
 11 and resulting in the instant dispute.

12 **A. “Operating In A Standalone Mode In Which The First Zone Player Is**
 13 **Configured To Play Back Media Individually” (’885 and ’966 patents)**

14 Both the ’996 patent and ’885 patent require that a first zone player “operate[] in a standalone
 15 mode in which the first zone player is configured to playback media individually” (the “Standalone
 16 Limitation”). The claim further require that the first zone player continue to operate in the
 17 standalone mode until a zone scene is invoked, at which point the first zone player “transitions from
 18 operating in the standalone mode to operating in accordance with the first predefined grouping of
 19 zone players.” The parties dispute the proper scope of the Standalone Limitation. Google contends
 20 that for a zone player to be operating in the standalone mode it must be actively playing back media,
 21 whereas Sonos contends that any zone player that is not playing back media as part of a group is
 22 necessarily in a standalone mode (regardless of whether that zone player is actively playing back
 23 media or is even configured for such individual playback). Google’s position stays true to the
 24 intrinsic evidence, while Sonos’s does not. Thus, the Court should construe the Standalone
 25 Limitation to mean “operating in a mode whether a zone player is actively playing back media
 26 individually.”

27 Sonos’s interpretation of the Standalone Limitation improperly reads out the phrase “in
 28 which the first zone player is configured to playback media individually.” *See, e.g., Intel Corp. v.*

1 *Qualcomm Inc.*, 21 F.4th 801, 810 (Fed. Cir. 2021) (“[i]t is highly disfavored to construe terms in a
 2 way that renders them void, meaningless, or superfluous”). According to Sonos, a first zone player
 3 is in standalone mode if it is not “operating in accordance with the first predefined grouping.” In
 4 other words, Sonos equates the term “standalone mode” with operating individually (*i.e.*, not in a
 5 group). But the term “standalone” inherently requires operating individually. Thus, the language
 6 of the claims indicates that operating in standalone mode requires something more, namely that the
 7 “first zone player is “operating in a standalone mode in which the first zone player is configured to
 8 play back media individually.” Simply put, the first zone player must be actively playing audio,
 9 such as music, while the remaining claim limitations are being performed through the execution of
 10 the claimed program instructions.

11 The meaning of the Standalone Limitation is also clear from the prosecution history of the
 12 ’966 and ’885 patent, which indicates that a zone player must be continuously outputting media as
 13 part of the Standalone Limitation. In particular, during prosecution, the asserted claims of the ’966
 14 and ’885 patents were allowed over the prior art Yamaha “DME” reference. TX0006 (’885 patent
 15 file history) at 5850. In explaining the reasons for allowance over the DME prior art, the Examiner
 16 explained that the Standalone Limitation requires the first zone player is “continuously outputting
 17 media” while joining the claimed overlapping zone scenes:

18 Particularly while DME operates to accomplish playback of selected
 19 media in synchrony on a selected set of first, second, etc. playback
 20 devices when a scene is invoked upon said set of players, ***DME does***
 21 ***not allow for continuous output of media on a particular playback***
device and joining the continuous output by a selected playback
device or set thereof in synchrony with media currently playing back
upon the particular playback device.”

22 TX0006 (’885 patent file history) at 5850. More specifically, the asserted claims require that the
 23 first zone player “transition from operating in the standalone mode to operating in accordance with
 24 the first predefined grouping of zone players.” The Examiner concluded that the DME prior art did
 25 not satisfy the limitation because a first zone player in the DME prior art could not transition from
 26 being configured for “continuous output of media” in the standalone mode to operating in
 27 accordance with a first predefined grouping of zone players. *See also* TX6 at 5850; Trial Tr. (Vol.
 28 7) at 1345:12-1347:16 (Schonfeld testimony re meaning of claim term in view of file history).

CERTIFICATE OF SERVICE

Pursuant to the Federal Rules of Civil Procedure and Local Rule 5-1, I hereby certify that, on May 16, 2023, all counsel of record who have appeared in this case are being served with a copy of the foregoing via the Court's CM/ECF system and email.

DATED: May 16, 2023

By: /s/ Sean Pak
Sean Pak